

Nebraska Judicial Ethics Opinion 06-3

Questions Presented--

- (1) *Is it appropriate for a clerk magistrate or any employee of the court to place candidate signs in their yards?*
 - (2) *Is it appropriate for a clerk magistrate or records clerk to hand out campaign literature for a candidate?*
 - (3) *Does it make a difference if the clerk magistrate or records clerk is related to the candidate?*
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Conclusion

The clerk magistrate is prohibited from placing candidate signs or in handing out campaign literature in election campaigns. Other employees are not subject to the Code of Judicial Conduct and may engage in those election activities under the guidelines outlined in Nebraska Judicial Ethics Opinion 98-3. However, caution should be exercised as suggested in that opinion.

Statement of the Facts

A clerk magistrate writes for an advisory opinion on the questions presented.

Applicable Code Sections

Neb. Code of Jud. Cond., Canon 5A(1)(b) and 5D

References in Addition to Nebraska Code of Judicial Conduct

Nebraska Judicial Ethics Opinion 98-3

Nebraska Judicial Ethics Opinion 02-1

Neb. Rev. Stat. § 24-519 (Reissue 1995)

Jeffrey M. Shaman et. al., *Judicial Conduct and Ethics* (3d ed. 2000)

Discussion

The following Canon of the Code of Judicial Conduct applies to the presented situation:

Canon 5

A Judge or Judicial Candidate Shall
Refrain from Inappropriate Political Activity

A. Standards of Political Conduct in General for All Judges and Candidates.

(1) Except as authorized in section 5B(2) and 5C(1), a judge or a candidate for retention in or appointment to a judicial office shall not:

....

(b) Publicly endorse or publicly oppose another candidate for public office,

....

D. Permissible Political Activity for Incumbent Judges.

A judge shall not engage in any political activity except

(1) as authorized under any other section of this Code;

(2) on behalf of measures to improve the law, the legal system, or the administration of justice, or

(3) as expressly authorized by law.

Generally speaking, judges may not engage in political activity unrelated to their own campaigns. They may, on a limited basis, participate in activities on behalf of measures to improve the law, the legal system, or the administration of justice. Clearly, placing candidate signs or handing out campaign literature constitutes political activity and is therefore a prohibited activity. Clerk magistrates are likewise subject to the Nebraska Code of Judicial Conduct. As pointed out in Nebraska Judicial Ethics Opinion 02-1, “Neb. Rev. Stat. § 24-519 sets forth the duties of a clerk magistrate. Those duties include many judicial functions, including: arraignment, receipt of pleas, imposition of certain statutory penalties, limited issuance of warrants for arrest or searches and seizures, setting of bail, determining temporary custody of juveniles, appointment of guardians ad litem, and hearing and determining non-contested probate matters. Each of these duties is judicial in nature. Although the judicial functions that may be performed by a clerk magistrate are limited in nature, they are, nonetheless, judicial functions, and the clerk magistrate acts as a judge of the county court while performing such duties.”

The Committee therefore concludes that since a clerk magistrate performs judicial duties, he or she is subject to the requirements of the Code and, like judges, may not engage in the political activities of displaying political signs or handing out campaign literature. It does not make a difference if the clerk magistrate is related to the candidate as the prohibited activity is based on “the general desire for a judiciary of unquestioned integrity, independence and impartiality.” See Jeffrey M. Shaman et. al., *Judicial Conduct and Ethics* §11.01 (3d ed. 2000). Family relationships have nothing to do with the philosophy behind the rule.

The employees and records clerks are not subject to the Nebraska Code of Judicial Conduct because they do not perform judicial activities. It is therefore permissible for employees of the court or records clerks to engage in the judicially prohibited political activities, provided they are performed during non-working hours and off the premises of the courthouse. See Nebraska Judicial Ethics Opinion 98-3. Please refer to that opinion as to the cautions that should be exercised.

Disclaimer

This opinion is advisory only and is based on the specific facts and questions submitted by the person or organization requesting the opinion pursuant to appendix A of the Nebraska Code of Judicial Conduct. Questions concerning ethical matters for judges should be directed to the Judicial Ethics Committee.

APPROVED AND ADOPTED
BY THE COMMITTEE ON MAY 19, 2006

*Judge John F. Irwin
Judge Stephen R. Illingworth
Judge John F. Steinheider
Judge Carlton E. Clark
Judge John A. Colborn
Judge Robert B. Ensz
Judge Lawrence D. Gendler*